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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAIME LUEVANO,
12 Inmate No. 9340134,

13 Plaintiff,

14 vs.

15 ARNOLD SCHWARZENEGGER, et al.,
16

17 Defendants.
18

Civil No. 08-1755 L (POR)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a)
AND/OR FAILING TO MOVE
TO PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)**

19 Jaime Luevano ("Plaintiff"), a prisoner currently incarcerated at the El Paso Detention
20 Facility located in El Paso, Texas, and proceeding pro se, has filed a civil rights Complaint
21 pursuant to 42 U.S.C. § 1983.

22 **I.**

23 **FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS**

24 All parties instituting any civil action, suit or proceeding in a district court of the United
25 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
26 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only if
27 the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).
28

1 See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d
2 1176, 1177 (9th Cir. 1999).

3 Plaintiff has neither prepaid the \$350 filing fee required to commence a civil action, nor
4 has submitted a Motion to Proceed IFP. Therefore, this case is subject to immediate dismissal
5 pursuant to 28 U.S.C. § 1914(a).

6 **II.**

7 **CONCLUSION AND ORDER**

8 Accordingly, the Court hereby:


9 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
10 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. § 1914(a) and § 1915(a);

11 (2) **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order to:
12 (a) pay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to proceed IFP
13 which includes a certified copy of his trust account statement, or his correctional institution's
14 equivalent, for the 6-month period preceding the filing of his Complaint pursuant to 28 U.S.C.
15 § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b); and

16 3) **DIRECTS** the Clerk of the Court to provide Plaintiff with the Court's approved
17 form "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*." If Plaintiff
18 fails to either prepay the \$350 civil filing fee or complete and submit the enclosed Motion to
19 Proceed IFP within 45 days, this action shall remain dismissed without prejudice and without
20 further Order of the Court.

21 IT IS SO ORDERED.

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23 DATED: October 14, 2008

24 
25 M. James Lorenz
26 United States District Court Judge
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